



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

Police Officer Parris Hooper : ORDER

Tax Registry No. 930366 : OF

Military and Extended Leave Desk : DISMISSAL

X

Police Officer Parris Hooper, Tax Registry No. 930366, Shield No. 30651, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2010 3310 and 2011-3702, as set forth on form P.D. 468-121, dated December 29, 2010 and February 18, 2011, respectively, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Parris Hooper from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On August 1, 2012 @0001HRS



POLICE DEPARTMENT

July 17, 2012

In the Matter of the Charges and Specifications : Case Nos. 2010-3310 &
- against : 2011-3702

Police Officer Parris Hooper :

Tax Registry No. 930366 :

Military and Extended Leave Desk :

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Mark Berger, Esq.
Chai Park, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on February 22, 2012, March 8, 2012, and March 14, 2012, charged with the following:

Disciplinary Case No. 2010-3310

1. Said Police Officer Parris Hooper, assigned to Fleet Services Division, on or about and between December 16, 2009 and June 12, 2010, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c) – PUBLIC CONTACT PROHIBITED CONDUCT, GENERAL REGULATIONS

2. Said Police Officer Parris Hooper, assigned to Fleet Services Division, on or about and between December 16, 2009 and June 12, 2010, having received a lawful order from a supervising officer not to have any contact with Mr. Person A did fail to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS, GENERAL REGULATIONS

3. Said Police Officer Parris Hooper, assigned to Fleet Services Division, on or about July 23, 2010, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer made misleading statements to a homicide investigator from the Orangeburg South Carolina Sheriff's Office about his whereabouts prior to the death of Mr. Person A *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT, GENERAL REGULATIONS

Disciplinary Case No. 2011-3702

1. Said Police Officer Parris Hooper, assigned to Military and Extended Leave Desk, while off-duty, on or about February 16, 2011, in Nassau County, did wrongfully engage in conduct prejudicial to the Good Order, Efficiency or Discipline of the Department in that said officer gave marijuana to Person B without police purpose or necessity. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Parris Hooper, assigned to Military and Extended Leave Desk, while off-duty, on or about February 16, 2011, in Nassau County, did wrongfully engage in conduct prejudicial to the Good Order, Efficiency or Discipline of the

Department in that said officer possessed marijuana without police purpose or necessity.
(As amended)

P.G. 203-10, Page 1, Paragraph 5 -- GENERAL REGULATIONS

3. Said Police Officer Parris Hooper, assigned to Military and Extended Leave Desk, while off-duty, on or about February 17, 2011, in Nassau County, did wrongfully engage in conduct prejudicial to the Good Order, Efficiency or Discipline of the Department in that said officer possessed marijuana without police purpose or necessity.
(As amended)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Police Officer Parris Hooper, assigned to Military and Extended Leave Desk, on or about and between August 2, 2010 and February 16, 2011, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities. *(As amended)*

P.G. 203-10, Page 1, Paragraph 2(c) - PUBLIC CONTACT – PROHIBITED CONDUCT, GENERAL REGULATIONS

5. Said Police Officer Parris Hooper, assigned to Military and Extended Leave Desk, on or about February 23, 2011, during an official Department Interview conducted by Lieutenant Kenneth Noonan, Internal Affairs Bureau, Group 33, pursuant to the provisions of Patrol Guide Section 206-13, did wrongfully make false and misleading statements regarding the events set forth in Specifications #1 and #2. *(As amended)*

P.G. 203-08, Page 1, Paragraph 1 – PUBLIC CONTACT – GENERAL

The Department was represented by Mark Berger and Chai Park, Esqs., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-3310

Respondent is found Guilty.

Disciplinary Case No. 2011-3702

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Joseph Gallo, Sergeant Brian Denis, Sergeant Francesco Frangella, Lieutenant Kenneth Noonan and Criminalist Cherisse Woods as witnesses.

Lieutenant Joseph Gallo

Gallo, a 15-year member of the Department, is currently assigned to the Internal Affairs Bureau (IAB). In December 2009, while a sergeant in IAB Group 31, he was involved in an investigation involving Respondent's association with a narcotics user, Person A. Person A had been arrested 11 times and was on parole and probation. Some of Person A arrests had been for felonies.

During a December 2009 official Department interview, Respondent explained that his mother raised Person A since Person A was a child. Respondent told Gallo that he saw Person A at family functions once in a while and maybe at holidays but did not see him "too often other than that." Respondent also told Gallo that he was aware of a low-level arrest that Person A may have had when he was younger but was unaware of any conviction

status. Respondent did not describe any sort of legal or blood relationship with Person A. Gallo informed Respondent of Department policy regarding criminal association, and he ordered Respondent to stop associating with Person A. At the interview, Respondent's attorney also advised Respondent to cease association with Person A and Respondent agreed to discontinue the association. To the best of Gallo's knowledge, however, Respondent was not compliant with the order.

On July 6, 2010, IAB Group 31 received a log from an anonymous source claiming that Person A was shot and killed while he and Respondent were in South Carolina conducting a drug transaction. As part of his investigation, Gallo spoke on the telephone with a Sergeant Shemper of the Orangeburg County (South Carolina) Sheriff's Department.¹ Shemper confirmed that Respondent was, in fact, at the scene of Person A shooting. Shemper also told Gallo that Respondent stated to a Commander Williams at the scene that he (Respondent) had been staying at an Orangeburg motel with Person A. Gallo spoke with Williams in person during a trip to Orangeburg later that month. Williams told Gallo that at the crime scene Respondent identified himself as a member of this Department and displayed his shield. Williams reiterated that Respondent told him that he had been staying in a motel with Person A. Respondent also told Williams that Person A had picked him up from the bus terminal.

While in South Carolina, Gallo spoke with a man named Person C who owned a Kia dealership in Orangeburg. Person C told Gallo that a few days prior to the shooting, Person A and Respondent went to Person C dealership because Person A was interested in buying a car. Person C confirmed Respondent's identification by photograph. Gallo

¹ At various points on the record, Shemper was referred to as Shuberg and Sheperd. While there is no way for the Court to confirm which of these names is accurate, it uses Shemper for the sake of consistency.

described the Kia dealership as “a typical car dealership . . . [with] showroom windows, vehicles parked out front, signage advertising.” Gallo also spoke with a Person D , who worked at a Toyota dealership in town. Person D stated that Person A and Respondent had been to the dealership and that Person A put down a deposit on a pre-owned Cadillac. Like Person C Person D confirmed Respondent’s identification by photograph. Gallo described the Toyota dealership as a large, white building with a lot of vehicles parked in the front and a clearly displayed “Toyota of Orangeburg” sign. [Department’s Exhibit (DX) 1 is a photograph that was taken in July 2010 of the Toyota dealership.] As part of his investigation, Gallo also spoke with a James Golden of the Orangeburg County Coroners Office. Golden told Gallo that he was informed by Respondent at the crime scene that he (Respondent) had been staying at a motel with Person A

With Gallo present in the room, Shemper called Respondent on speakerphone. Respondent stated during the phone call that Person A had picked him up at the Orangeburg bus terminal. (Gallo noted that Respondent would go on to state in an official Department interview several months later that it was a female friend who picked him up at the station.) Respondent also told Shemper during the phone call that he did not stay with Person A at the motel, that he did not tell anybody from the coroner’s office that they had been staying at the motel together, and that Person A had actually stayed at the home of family members in town. Respondent at first told Shemper that he did not have any knowledge of who Person A went to car dealerships with, but later in the phone call he stated, “We were at this place, it was on the side of the road, they had cars there, [but] I don’t know if I would call it a car dealer per se.”

At a November 12, 2010 official Department interview, Respondent denied staying at an Orangeburg motel with Person A. He also initially denied visiting car dealerships with Person A. Respondent conceded to being at the dealerships only after Gallo informed him that he had been identified by people at the dealerships and that Gallo had listened in on Shemper's telephone call. Respondent explained that his initial denial was based on fear of getting in trouble with the Department. Respondent also admitted at the interview that he told Person A widow that he was unable to retrieve Person A personal property from Orangeburg because he was not supposed to have been associating with Person A.

On cross-examination, Gallo testified that the Department Advocate's Office has allowed members of the service to continue relationships with people who have criminal records in cases of certain blood relations. After Person A mother died, Person A went to live with Respondent and Respondent's mother. Respondent and Person A were not related by blood. Gallo reiterated that he instructed Respondent at the December 2009 interview to discontinue his association with Person A. Gallo did not find Respondent to have committed misconduct prior to the interview.

Gallo confirmed that a woman who wanted to remain anonymous called IAB to make allegations against Respondent and used a fictitious name. Investigators did not have an opportunity to speak with the woman in person. One of the allegations made by the woman was that Respondent was a member of a motorcycle group at a specific location. An investigation showed that while there was a motorcycle group located around the corner from Respondent's house, no charges were substantiated against him. The woman also alleged that at one point Respondent gave her marijuana and that when

she went home with him she woke up bleeding from her anus. Another allegation was that Respondent had a brother named Person A who was a drug dealer. The woman made her calls to IAB from pay phones. Except the information regarding Respondent's association with Person A the information made by the woman turned out to be fabricated.

While Person A had been arrested for distribution of drugs, his last arrest occurred 25 to 30 years ago. There was no evidence that Person A was involved in any drug dealing at the time that the calls from the anonymous woman came in to IAB. Yet another call came in, however, claiming that Person A had been killed in a drug deal gone bad. This call was the third call made by an anonymous woman about Respondent. Although the woman on the third call gave a different name, investigators believed that it could have been the same woman who made the previous telephone calls. The Orangeburg Police Department determined that Person A had been an innocent bystander who got caught in a shooting between two drug gangs. Person A was struck by a stray bullet.

Respondent responded to the scene of the shooting and identified himself as a member of the Department. Gallo's investigation showed that Person A car was listed on the registration at the Orangeburg motel where Respondent was staying. In addition, a key card for Respondent's room was found in Person A car. Respondent explained to investigators that he had previously been in Person A vehicle. The motel room was paid by Respondent. Person A had arrived in Orangeburg a couple of days before Respondent.

The telephone call that Shemper made to Respondent on speakerphone was not recorded. Gallo took notes during the call, and the notes were transposed onto worksheets upon his return to New York. Similarly, Gallo's conversation with Golden and any other witnesses that Gallo spoke with in Orangeburg were not recorded.

While Gallo's investigation showed that Respondent was with Person A during periods of the day that Person A was shot, there was no evidence that they were together at the time of the shooting. Respondent told investigators that other family members were present during the occasions that he and Person A were together. There was no evidence, however, that anybody else was with Respondent and Person A when they went to the car dealerships.

Respondent was the subject of random drug screening four times between 2003 and 2010. All results came back negative.

On redirect examination, Gallo confirmed that there was never an allegation that Respondent used drugs. To Gallo's knowledge, Respondent never took steps to have the order to discontinue association with Person A overturned.

On recross-examination, Gallo confirmed that there is no form that can be filled out to challenge a supervisor's admonition to not associate with someone. He assumed that to overturn an order from IAB a member of the service would have to confer with the Department Advocate's Office.

Sergeant Brian Denis

Denis, a ten-year member of the Department, has been assigned to IAB Group 31 for four years. He has attended two weeks of undercover narcotics training and has made numerous narcotics arrests. In January 2011, he took over an investigation that Gallo had been working on concerning Respondent. The investigation stemmed from a telephone call made by a woman who alleged that Respondent was supplying her with marijuana and selling it. The woman identified herself as Person B. Denis compared Person B

voice to the voice of a Person F [REDACTED], the woman who had made previous allegations against Respondent. Denis determined that the two women had totally different voices.

In Person B initial call to the IAB command center, she reported that she had been falsely arrested for harassment. Only after the detective who took the call asked her if she had any other information in regards to police corruption or misconduct did Person B [REDACTED] Person B [REDACTED] allege that she used to date a police officer (subsequently identified as Respondent) who supplied her with drugs. Person B [REDACTED] told the detective that Respondent would obtain the drugs from people he arrested, that he would voucher some of the drugs and keep the rest for himself. In contrast to Person B [REDACTED] call to the command center, Person F [REDACTED] calls dealt strictly with Respondent.

Denis interviewed Person B [REDACTED] on January 22, 2011. In the interview, Person B [REDACTED] stated that she met Respondent after she was arrested and went to retrieve property from the 84 Precinct property clerk's office. Respondent summoned her over, and they started talking and exchanged numbers. During their conversation, Person B [REDACTED] informed Respondent that she was there to pick up property after an arrest. Respondent was on duty and in uniform at the time. Later in the day, Respondent contacted Person B [REDACTED] and arranged a meeting. He picked her up and brought her to his residence on [REDACTED]. Once there, he supplied her with alcohol and asked her if she wanted marijuana. Person B [REDACTED] told Denis that on four or five occasions Respondent picked her up, brought her to his residence, gave her alcohol, came downstairs with a clear Tupperware containing marijuana, and offered it to her. They would then have sex. Respondent told Person B [REDACTED] that he obtained the marijuana from people that he arrested. Their relationship lasted approximately three months. It ended because Person B [REDACTED] found Respondent to be arrogant. Person B [REDACTED] agreed to cooperate with IAB

because she felt like Respondent belittled her. [DX 2 and 2A are the tape and transcript of the January 22, 2011 interview.²]

Denis arranged for a “controlled meet” between Person B and Respondent for the purpose of Person B to obtain drugs from him. The meeting took place at an Applebee’s restaurant on Emmons Avenue on February 11, 2011. Before the meeting, investigators instructed Person B on what to say and do. There were undercover IAB members inside and outside of the restaurant. Person B wore an audio wire and was supplied with a camera bag. Person B did not obtain any drugs at the meeting, but Respondent did make a statement about how he used to use and sell drugs before becoming a police officer. On *voir dire*, Denis testified that Respondent made just one statement about drugs during the course of a meeting that lasted two or three hours. The statement was made while Person B and Respondent were alone in Respondent’s vehicle. This was after Person B left the restaurant against the wishes of an undercover officer named Person G who had been accompanying her. The video recording did not capture that part of the meeting. [DX 3 and 3A are the compact disc recording and transcript of the relevant portion of the February 11, 2011 meeting.]

At 8:30 p.m. on February 16, 2011, Person B called Denis to tell him that Respondent had contacted her and wanted to meet with her. Denis informed Person B that he did not think it would be a good idea for her to meet with Respondent because at the time any conversation could not be recorded and her safety could not be guaranteed. Denis advised her to wait until he could arrange for another controlled meeting. At

² The Assistant Department Advocate (Advocate) stated that a subpoena was left at the address that the Department had on file for Person B but she never answered it. Denis stated that he made numerous trips to the address, but nobody appeared to be living there. When the Advocate called the telephone numbers that the Department had on file for Person B they were disconnected. The Department was unable to locate her to testify at this proceeding.

approximately 10:50 p.m., Person B Person B called Denis a second time and excitedly told him that she ended up going to Respondent's house and obtained three bags of marijuana from him.

When Denis drove to Nassau County to pick up Person B she gave him a Ziploc bag that contained a substance appearing to be marijuana. Person B Person B also played for Denis a video that she recorded on her cell phone. The video showed Respondent giving Person B what appeared to be marijuana in his kitchen. Person B Person B told Denis again that she obtained three bags of marijuana, as Respondent approached her three different times in the kitchen. On the video, Respondent can be heard referring to a bag as "a dime" and Person B Person B can be heard referring to a bag as "a nick." Person B Person B can also be heard referring to the contents of the bag as "weed" and "bud." Based on his experience as a member of the Department, Denis explained that these are all terms used to refer to marijuana, not tobacco. When Denis pointed out to Person B Person B that she only had one bag of marijuana with her, Person B Person B became angry and claimed that Respondent must have removed the other two bags from her purse when she left it unattended. A subsequent field test showed that the substance in the Ziploc bag was in fact marijuana. Person B Person B indicated to Denis that she smoked some of the marijuana that night. [DX 4 is the evidence collection bag that contained the marijuana Denis received from Person B DX 5 and 5A are the recording and transcript of the video Person B Person B took on her cell phone.]

Based on Person B's video recording, a search warrant was obtained and executed at Respondent's residence on February 18, 2011. Denis was present at the execution. It did not appear that anyone other than Respondent was living at the residence at the time. As a result of the search, a black plastic hat that was located in Respondent's bedroom closet

was vouchered. The hat was vouchered because it was found upside down with a large amount of rolling papers, and Denis' supervisor deemed it suspicious. The hat was sent to the laboratory, where it tested positive for marijuana residue. [DX 6 is the hat.]

Respondent was subsequently arrested in Nassau County for criminal possession and sale of marijuana. The criminal case against Respondent was ultimately adjourned in contemplation of dismissal.

On cross-examination, Denis confirmed that he was aware of the fact that there had been previous allegations made by an anonymous female caller against Respondent. That anonymous caller had identified herself to the Department as Person F or Person F. Denis reiterated that the anonymous caller and Person B had different voices. He also reiterated that Person B strayed from instructions when she left the Applebee's without Person G. The plan had been that Person B and Person G would entice Respondent with the possibility of a ménage à trois, but Person B did not want to deal with Person G any longer. Before the controlled meeting, Person B called Respondent and reminded him not to forget "the stuff." Person B did not use the word marijuana or pot during the phone call.

Person B was searched before entering the Applebee's. This was done to ensure that whatever drugs she possessed were, in fact, obtained by Respondent. As it turned out, though, Person B did not obtain anything from Respondent on that day.

Although Person B at one point expressed interest in becoming a paid informant, she was never officially registered as a confidential informant. Person B was unemployed and did not have much money. Respondent paid a bill for her once in a while. She had been previously arrested for grand larceny and robbery.

Person B went to Respondent's house on February 16, 2011 even though Denis had instructed her not to go. When Person B called to inform Denis that she had obtained drugs from Respondent, they arranged to meet at a fast food restaurant near Respondent's house. It took Denis 45 minutes to get there. Denis reiterated that when he pointed out to Person B that she had only one bag of marijuana in her purse and not three, Person B claimed that Respondent must have removed the other two bags. Person B explained to Denis that she left her purse unattended on the kitchen table when she went downstairs to smoke. The Ziploc bags were later tested for fingerprints, but no prints were recovered.

No narcotics were found during the execution of the search warrant at Respondent's house. Denis could not tell that the residue on the hat was marijuana just by looking at it. Although it looked like Respondent lived alone, there were items belonging to other people in the house. Denis later learned that Respondent had a son in college who had been arrested at some point for driving under the influence of marijuana. After the search, Respondent was drug tested with cause. The test came back with negative results.

After Respondent's arrest, the Nassau County District Attorney's Office told Denis that a corroborating affidavit from Person B might be necessary. When Denis spoke to Person B about it, she told him that she was working as a confidential informant with the Central Robbery Squad. Denis later learned that this was a lie. Denis described Person B as someone who was very good with details and for the most part followed instructions.

Person B expressed to Denis at one point that she was scared that Respondent would "come get her." Denis never provided an affidavit. She told IAB that she no longer wanted anything to do with the case against Respondent. Person B reiterated that the criminal case

was adjourned in contemplation of dismissal. The judge stated that continuing with the case would be a waste of the court's time and resources.

On redirect examination, Denis testified that, according to Person B she and Respondent met for the first time in August 2010.

On recross-examination, Denis confirmed that the video recording that Person B took of her visit to Respondent's house on February 16, 2011 had a time and date stamp. Person B did not record her entire visit, as she was able to pick and choose when to turn on or off the camera. In one scene of the video Respondent was wearing one set of clothes and in another scene he was wearing a totally different outfit. Denis did not know if Person B erased any footage during the 45 minutes that it took to meet her at the fast food restaurant. These were the disadvantages of having Person B go to Respondent's house on her own without Department surveillance or equipment.

Upon further questioning, Denis testified that, according to Person B Respondent never consumed marijuana. Respondent told Person B that he had an upcoming drug test. Respondent had a three-bedroom house. Two of the bedrooms had some clothes inside but not enough to indicate that anyone was living there. Denis reiterated that the plastic hat was found in Respondent's bedroom closet.

Sergeant Francesco Frangella

Frangella, an 18-year member of the Department, is currently assigned to IAB Group 31. On February 18, 2011, he received from Denis and brought to the Department laboratory the hat that had been recovered during the search of Respondent's residence. According to Frangella, the hat had a "residue of green leafy substance" in it. Denis also gave Frangella the bag of marijuana that Denis received from Person B [DX 7 is the

Property Clerk's Invoice that Frangella prepared for the hat, and DX 8 is the Property Clerk's Invoice that he prepared for the bag of marijuana.]

On cross-examination, Frangella confirmed that he was not present at the execution of the search warrant. Before testing was conducted on the hat, Frangella was able to see little pieces of green on it. No green residue was visible after testing because the entire residue was used by the laboratory for testing purposes.

Lieutenant Kenneth Noonan

Noonan, a 12-and-a-half-year member of the Department, is currently assigned to IAB Group 33. On February 23, 2011, he conducted an official Department interview of Respondent. At the beginning of the interview, he read Respondent the Patrol Guide section warning against the making of false statements. Although Respondent indicated that he understood the warning, Noonan believed that Respondent made four false statements during the course of the interview. The false statements, according to Noonan, revolved around Respondent's assertion that he offered Person B tobacco.

Nobody informed Respondent prior to the interview that Person B had videotaped her February 16 visit to his residence. Noonan watched the video, in which Respondent can be heard referring to the bag as "a dime" and Person B can be heard referring to the bag as "a nick" and the contents of the bag as "weed" and "bud." Person B can also be heard on the video saying that the contents of the bag had dust in it. Noonan testified that the context of the video led him to believe as a police officer that Respondent and Person B were talking in the video about marijuana and that Person B comment about dust suggested that the marijuana was laced with angel dust.

At the official Department interview, however, Respondent stated that he approached Person B with a bag of tobacco, that it was a macanudo cigar that Person B claimed had dust in it, and that he offered Person B half-smoked macanudo tobacco in a Ziploc bag. According to Noonan, Respondent's statements about tobacco were inconsistent with the evidence in this case. [DX 9 and 9A are the interview tape and transcript.]

On cross-examination, Noonan confirmed Person B recorded only a few minutes of video footage at Respondent's residence. Noonan did not know how long Person B was present in the house. There were periods that she was in the house that were not depicted in the video. The video recording was made by Person B without Department equipment or supervision. There was, therefore, no way to know what was edited from the video or what was said in the house that was not captured on the video. Noonan conceded that it was possible Respondent at one point gave Person B tobacco.

Noonan confirmed that members of the service are allowed to deny misconduct that they are accused of during questioning at an official Department interview. At no point during the approximately 80 pages of questioning, however, was Respondent ever asked if he provided someone with marijuana. There was, therefore, no way for Respondent to simply deny committing misconduct. Nor was Respondent given an opportunity to explain what occurred before or after the video segments that Person B recorded.

Criminalist Cherisse Woods

Woods has been employed as a criminalist for approximately three years. She is currently assigned to the Forensic Laboratory, where she analyzes evidence for the possible presence of controlled substances. She holds a Bachelor of Arts degree in

biochemistry and a Master of Science degree in forensic science. While at the laboratory she underwent a ten-month training program that consisted of written, oral and practical examinations, as well as one month of supervised casework. She has been deemed an expert in forensic laboratory testing three times, two of which were in Manhattan Criminal Court. Woods was qualified as an expert in forensic drug analysis.

Woods examined the contents of the Ziploc bag that Denis received from Person B. Microscopic and macroscopic examination, along with a Duquenois-Levine color test, confirmed that the bag contained marijuana. Person B also examined the plastic hat that was recovered from Respondent's closet. Because there was not a sufficient amount of material present on the hat for Woods to conduct the same tests, she ran Gas Chromatography-Mass Spectrometry on the hat. This test found the presence of Delta 9THC, which is the psychoactive ingredient found in marijuana. Delta 9THC is not found in any other substance apart from marijuana. Woods was, therefore, able to confirm the presence of marijuana on the hat. [DX 10 is the formal report that Woods prepared for the bag of marijuana, and DX 11 is the formal report that she prepared for the hat.]

On cross-examination, Woods testified that a very small amount of marijuana (less than two milligrams or less than two percent of the total quantity of marijuana in the Ziploc bag) was used from the bag for analysis. The rest of the marijuana still remained after testing. Woods could not recall if she tested the marijuana in the Ziploc bag or the residue on the hat first. In either case, she would have cleaned her work station in between tests. When she first examined the hat, she noticed a discrepancy with what was on the voucher. While the voucher listed that a green, leafy substance was present on the

'hat, Woods did not see such a substance. She notified her supervisor of the discrepancy. The supervisor confirmed that no green, leafy substance was visible to the naked eye. At first, Woods did not see any material on the hat, which was black. At that point she believed that the hat was empty. After turning the hat upside down on a sheet of white lining paper, however, she saw that there had been a very small amount of green, vegetative matter residue inside the hat. The amount of the residue was insufficient for Woods to weigh it. [Respondent's Exhibit (RX) A is the entire laboratory report for the evidence tested by Woods.]

Respondent's Case

Respondent recalled Sergeant Brian Denis as a witness and he testified in his own behalf.

Sergeant Brain Denis Recalled

Denis reiterated that Person B wore a recording device during the February 11, 2011 controlled meeting at Applebee's. He also reiterated that Person B was accompanied by an undercover officer named Person G. Person B was under the impression that Person G was a confidential informant. The audio recording of the meeting lasted several hours. During the period that Person B was in the restaurant, there was a lot of mumbling which made the recording inaudible. At one point after Respondent arrived at the restaurant, Person B went to the bathroom and called Denis to tell him what she wanted to do next. Person B told Denis that she believed Respondent had marijuana in his car, but Denis instructed her not to leave the restaurant without Person G. While still in the bathroom, Person B can be heard on

the recording telling Person G "We don't get paid unless we get the fucking weed." Person B can also be heard saying, "We didn't come this far not to get the fucking weed."

Later, while alone in Respondent's car, Person B can be heard saying something about smoking a cigarette, and Respondent can be heard telling her to roll down the window. Denis reiterated that at no point that day did Respondent give marijuana to Person B or Person G.

On cross examination, Denis confirmed that there was nothing on the audio recording to suggest that Person B was setting up Respondent. Person B said nothing about lying to IAB about getting marijuana from Respondent. Before the operation commenced, Denis informed Person B that confidential informants get paid for their assistance, and Person B asked how she can become one. Denis suggested that Person B might be considered for the informant program in the future, but there was never any talk of Person B getting paid for the operation at Applebee's. When asked why she would cooperate in the operation for free, Person B explained to investigators that she did not mind doing it because Respondent was so arrogant.

On redirect examination, Person B confirmed that unlike the operation at Applebee's, Person B was not searched before she went to Respondent's residence on February 16, 2011.

Respondent

Respondent, a ten-year member of the Department, is currently assigned to the Military and Extended Leave Desk. He has never before been the subject of Department discipline. He testified that although they are not biologically related, Person A was like an older brother to him. He explained that his mother took Person A in after Person A's mother died. At the time, Respondent was two or three years old and Person A was approximately

15 years older. Respondent and Person A lived in the same residence for eight or nine years. After Person A moved out, they did not have too much of a relationship. They would speak on the telephone sometimes and see each other once in a while at barbecues.

Person A went to jail 25 or 26 years ago. Respondent was a child at the time and did not have any contact with Person A while Person A was incarcerated. Respondent was too young at the time to know what Person A was in jail for, and they never discussed the matter at any point. At an official Department interview, Respondent learned that a woman had made allegations about Person A criminal history and also alleged that Respondent was involved in a motorcycle gang. Respondent did not receive charges based on these allegations, but he was instructed not to associate with Person A. Respondent indicated to the investigators that he had no problem with this instruction since he hardly saw Person A anyway. His attorney and union delegate subsequently clarified that any contact with Person A should be limited.

In June 2010, Respondent went to South Carolina for his family's annual reunion and barbecue. In a conversation that took place prior to the trip, Person A informed Respondent that he might be attending the reunion. Respondent took the bus to South Carolina. When he arrived, Person A along with three other people were waiting for him at the bus stop. Over the course of the next few days, Respondent and Person A spent a little time together. They were always accompanied by others. When Respondent and Person A went to a car dealership on two occasions, Person A and Person D and others were also there. Person D had to be there because she was the one with insurance. Respondent told Person A that they were not supposed to associate, and Respondent made an effort to limit contact with Person A while in South Carolina. To Respondent's knowledge, Person A had

been employed as a truck driver for a long time. Respondent had no knowledge of Person A being involved with drugs or any criminal activities.

At one point, Person D called Respondent to inform him that something had happened to Person A at a gas station. Upon his arrival at the gas station, Respondent learned that Person A had been killed. At the scene, Respondent identified himself as Person A brother and a police officer. Respondent remained in South Carolina one day after the killing and then flew home to New York. [RX B1 is an obituary pamphlet that was printed at the time of Respondent's mother's 1989 death. Person A was referred to in the pamphlet as the decedent's son. RX B2 is an obituary pamphlet that was printed at the time of Person A death. Respondent was referred to in this pamphlet as decedent's brother.]

While in Brooklyn approximately a month after the killing, Respondent received a telephone call from Orangeburg, South Carolina police personnel. Respondent was asked if he had gone to a car dealership with Person A on the day of the shooting. Because the Orangeburg investigator did not give the name of a specific dealership and Person A had gone to several dealerships without Respondent, Respondent told the investigator that he was not present at the dealership with Person A. Respondent received no further contact from the Orangeburg police, but Respondent knew from Person A wife that somebody had already been arrested for Person A killing.

Based on an allegation that Respondent was present when Person A was killed at the scene of a drug transaction, IAB called Respondent in for questioning. This was not the first time that anonymous allegations had been made against Respondent regarding drugs. None of the allegations regarding drugs were substantiated.

After 22 years of marriage, Respondent separated from his wife and moved to [REDACTED] in 2009. Respondent has three children, who lived with him part time. In February 2011, Respondent's two oldest children went to college out of town but stayed with him during school breaks. Respondent's son, Minor H [REDACTED] who was enrolled in college in Florida, had his own room in the house. Respondent's youngest child, who was still in high school at the time, stayed in the [REDACTED] house on weekends. All three children had their own key to the house.

Respondent first met Person B [REDACTED] when he was doing station house security and Person B [REDACTED] asked him for directions to the train. They started talking and exchanged telephone numbers. A sexual relationship commenced. Respondent explained that he would pick her up, get something to eat and drink, and then bring her back to his house for the night. This took place six to eight times during the course of a one or two month period. Usually before having sex they would smoke tobacco in cigarette or cigar form. Respondent explained that he has smoked cigars since 2003 and sometimes rolls his own cigars. Respondent introduced Person B [REDACTED] to rolled cigars, and they would smoke together on his deck. Respondent never smoked marijuana with Person B [REDACTED] nor did Person B [REDACTED] ever ask him for any. Respondent has never failed a drug test. Person B [REDACTED] regularly asked Respondent for money, and Respondent would give her some to help out. The most that he gave her at one time was \$200. At one point, Person B [REDACTED] told Respondent that she was going out of town. Perhaps because Respondent looked as if he did not care, Person B [REDACTED] started acting crazy and cursing at him. That was how the relationship ended.

Approximately a year passed before Person B [REDACTED] called Respondent again. Person B [REDACTED] called him, and they made plans to meet at Applebee's. Person B [REDACTED] asked him to bring something to

smoke to their meeting, and Respondent took this to mean that he should bring cigarettes since that is what Person B usually smoked. Because it is not permitted to smoke inside a restaurant, Respondent left a pack of Newport cigarettes in his car. When Respondent arrived at the restaurant, Person B was with somebody he did not know (previously identified as Person G). They remained in the restaurant together for approximately an hour. At no point did Person B or Person G ask him for marijuana. Person B at first told Respondent that she and Person G wanted to have a threesome with him, but she then started screaming when Respondent and Person G exchanged numbers. Respondent ended up leaving the restaurant with Person B going to his car and giving her the cigarettes that he had purchased. At no point did Person B ask him for anything other than cigarettes. Person B never asked him for marijuana.

Respondent testified that Person B proceeded to send him lewd text messages. She called him again on February 16, 2011, and they made plans to meet for sex. That evening Respondent picked up Person B and brought her back to his house. They drank gin and juice. Respondent smoked a cigar, and he gave one to Person B. He said that Person B asked for tobacco, and when Respondent brought her a Ziploc bag of tobacco she started talking about "weed." He thought Person B was going crazy when she started talking about "a nick" and "a dime." Respondent did not know at the time that he was being video recorded. Person B remained at the house for approximately three hours, but the recording she made lasted only two minutes. What was not depicted in the video was Person B repeatedly telling Respondent to give her marijuana and Respondent replying, "Stop bullshitting around. You know it's tobacco." In retrospect he sees that Person B was setting him up. He at no point provided her with marijuana.

While Person B was in the house, Respondent kept going upstairs because he needed to get ready for work. Meanwhile Person B went downstairs to the basement. When Respondent went to see what she was doing in the basement, Person B told him that she was smoking the cigar that he had given her. When Person B came upstairs, she told Respondent that she was feeling ill. Person B fled the house when Respondent went to get her a pillow. She took with her Respondent's Ziploc bag of tobacco. The next day at work, IAB personnel brought Respondent to the Medical Division for drug testing. He was then taken to Nassau County, where he was arrested and charged with possession of marijuana. The case was ultimately adjourned in contemplation of dismissal. Even after the arrest, Person B continued to send text messages to Respondent.

About the party hat that police recovered during the search of his residence, Respondent testified that his son, Minor H had the hat in his room since New Year's Eve. Respondent found the hat under Minor H bed and thought that Minor H was smoking marijuana because there were rolling papers inside the hat. Although Minor H had been arrested for marijuana approximately six months earlier, Respondent did not see anything that looked like marijuana in the hat. Respondent kept the hat in his closet because he planned on confronting Minor H about using marijuana the next time that Minor H returned from college. There was a safe in the house, but there was nothing found in the safe at the time of the search.

Respondent did not know that Person B had a criminal record when they began their relationship. At the official Department interview that took place subsequent to Respondent's arrest, nobody showed Respondent any video. Nor did anybody tell him about the operation that had occurred. Respondent did not have any knowledge that Person B

or Person G was working for IAB. At the interview, Respondent told investigators that he gave Person B tobacco. He has never given marijuana to Person B or to anybody else. He used to make marijuana arrests when he was a new police officer nine years ago. He has never taken marijuana from anybody without voucherizing it.

Respondent had contact with Person A in South Carolina even after a supervisor instructed him to discontinue their association because they were at a family reunion and Person A was his brother. Respondent explained, "I can't leave and I could not tell him to leave. And I could not stay there and avoid him. We had a house where there is a lot of people. There was nothing I could do." After receiving the instruction to discontinue their association, Respondent had only minimal contact with Person A

On cross-examination, Respondent confirmed that he knew prior to the December 16, 2009 official Department interview that Person A had been arrested, but he believed that the arrest had only been for petty offenses. Respondent never specifically asked Person A what he had been arrested for. While he told investigators at his interview that he did not know Person A served time in jail, he acknowledged on direct examination that he was aware as a child that Person A had been incarcerated. It was only at the interview that Respondent learned that Person A had an extensive criminal history that included many felonies. While Respondent was aware that Person A was in prison at some point between 1987 and 1998, he did not know that Person A was incarcerated throughout that entire period. Respondent was busy during those years raising his children.

Person A lived with Respondent's family from the time that Respondent was three years old until he was 11 years old. Because Person A was so much older, they did not socialize with each other after Person A moved out of the house. They would see each

other only at family events. On the day of the interview, Gallo told Respondent that he was no longer allowed to associate with Person A. Respondent's attorney reiterated on the interview record that Respondent's association with Person A was to cease. Respondent did not seek clarification. Respondent and Person A have no legal or biological relationship with each other. Respondent described Person A at the interview as "just a friend."

Respondent conceded that he did not comply with the order to stay away from Person A. He reiterated that subsequent to the interview, his attorney and union delegate told him that contact with Person A should be limited. They told him that he would not have to leave a party if he were to bump into Person A. In Respondent's opinion, a police officer may disregard an order when the officer believes that the order was wrongfully given. Respondent made no attempt to have the order rescinded.

Before going to South Carolina, Respondent informed Person A that they were not supposed to have contact with each other. Person D picked Respondent up at the bus station and Person A was with her in the car. At that point, Respondent told Person A again that they were not supposed to have contact with each other. Respondent got in the car anyway because the only alternative would have been to walk. Respondent reiterated that he went with Person A to two car dealerships while in South Carolina. He explained that when Person D called and told him that they were going to dealerships, he asked Person D to pick him up at the hotel so that he could go with them.

After the shooting, Person A wife asked Respondent to retrieve Person A property from the car. Respondent told the wife that he could not retrieve the property because he was not supposed to have been in contact with Person A. He conceded that he was concerned at the time about the Department finding out about his continued association

with Person A Respondent told the coroner at the scene of the shooting that he was Person A brother and that he was staying at the hotel. According to Respondent, he told neither the coroner nor a commander from the Orangeburg Sheriff's Department that he and Person A had been staying at the hotel together.

Respondent did not tell Shemper in a July 23, 2010 telephone call that Person A picked him up at the bus stop upon his arrival in South Carolina. Respondent reiterated that several people, including Person D and Person A were in the car that picked him up. Respondent at first told Shemper that he had not visited car dealerships with Person A. Later in the phone call, he clarified to Shemper that while he did go with Person A to a place that sold cars on the side of the road he did not know if he would necessarily call the place a dealership. He denied that he altered his answer only when he realized that there might be a video recording of him at the dealership. He further denied that he was not truthful with Shemper because he was afraid of getting in trouble with the Department. He explained that he gave Shemper the best answer he could at that moment.

Respondent met Person B in March 2010. When they met, he did not know where Person B was coming from. She did not tell him anything about being arrested. That night they had sex. He told her that his name was Minor H because that is his nickname, and he did not want her to know his real name. He reiterated that he never gave Person B marijuana.

When Person B referred to marijuana during the February 16, 2011 meeting at his house, he told her, "What the hell are you talking about? This is tobacco." He explained that he himself referred to the bag as "a dime" at one point because he "was thinking about

"getting laid." It was Person B who initiated talk about weed, and as it turned out it was because she was setting him up.

Respondent was a peace officer before becoming a member of this Department. In total he has worked for the City for 20 years. He has never sold drugs. He explained that when he was at Applebee's with Person B he alluded to the fact that he used and sold drugs before becoming a police officer because he "was just talking junk with her because she was talking about she know people who used to sell drugs and stuff like that. I was just trying to big up myself just to get laid. . . She was talking and I just followed her leads." Respondent realizes now that, as a police officer, it was not a good idea for him to joke about using and selling drugs. Respondent never had marijuana in his house, nor did he think his son would bring marijuana into the house.

Upon further questioning, Respondent testified that he has made 50 or 60 arrests during the course of his career. He has made just one marijuana arrest, and that arrest took place at the beginning of his career. As far as he recalls, that was his only drug arrest. When asked if he told Person B that he kept drugs that were recovered during arrests, he explained, "We was just talking jive, and I don't recall but maybe I did say that because I was just trying to get laid and she was talking about that she know these people. It wasn't nothing that I really thought about. We were drinking and just talking a bunch of jive."

Respondent testified that he has two closets in his bedroom. He stored his tobacco in one closet and the plastic top hat on the top shelf of the other closet. Respondent learned that when Person A went to get air for his tires, he got caught in a shootout between two drug gangs.

FINDINGS AND ANALYSISDisciplinary Case No. 2010-3310
Specification Nos. 1 and 2

Respondent stands charged herein in that while assigned to Fleet Services Division, on or about and between December 16, 2009 and June 12, 2010, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities. He is also charged in the same period with having received a lawful order from a supervising officer not to have any contact with Mr.

[Person A] and did fail to comply with said order.

Respondent's mother, Hattie Mae Hooper, took in her best friend's son, [Person A] [Person A] when Respondent was two years old. Respondent testified that [Person A] was 15 years older than him, but he considered him to be an older brother since they were raised in the same household. Respondent said that he would see [Person A] once in a while after [Person A] moved out. Respondent knew that [Person A] had gone to jail 26 years ago, but he was a child at the time and never inquired about the circumstances surrounding [Person A] arrest and jail time.

Respondent testified that in June 2010, he traveled to South Carolina for a family reunion. He rode a Greyhound bus and was met by four people at the bus station. Respondent said that [Person A] niece [Person D] was driving, but that [Person A] was in the car. Respondent said he may have spoken to [Person A] before his trip and after he arrived in South Carolina, though he tried to limit his contact with him. Respondent noted that he alternated between being with family members and spending time in his hotel.

At some point later while at his hotel, Respondent received a telephone call from [Person D] who was screaming. She said that something happened to [Person A] because his

truck was parked at a gas station. Respondent said another cousin came to his hotel room and picked him up and they went to the gas station. Respondent identified himself as a police officer on the scene and learned that Person A was shot and killed. It was later revealed that Person A was at the gas station to get gas when a fight broke out between two rival gangs and Person A tried to get out of his truck and run for cover but was hit in the crossfire. It was determined that Person A had no connection to the gangs and was a bystander hit in the crossfire.

Respondent provided an obituary for Person A (RX B2) which noted that Person A was 58 years old in 2010. Respondent on the day of trial in 2012 was 45 years of age. Respondent also provided an obituary for his mother who died in 1989 (RX B1). In it she listed both Respondent and Person A as her children.

Respondent explained that he was the subject of an official Department interview regarding other allegations that were later unsubstantiated.³ He was told during that interview that Person A had a criminal record and that it was also alleged that Person A was dealing drugs. Respondent was ordered to refrain from having any contact with Person A. Respondent said that he was told by his delegate and attorney, subsequent to the official Department interview, to have limited contact with Person A. Respondent claimed that during the time he was in South Carolina, he did go to a dealership on two occasions with Person A who was looking for a new vehicle. He also claimed that he did not spend his entire time in South Carolina with Person A. Furthermore, the Orangeburg South Carolina Police Department conducted an investigation into the death of Person A. There was no

³ It must be noted by the Court that the substance of this official Department interview was not provided to this Court. The Court received a tape and transcript of an official Department interview (DX 9 and 9A) which dealt exclusively with Respondent's contact with Person G and Person B. No reference was made in this interview to Person A.

dispute that neither Person A nor Respondent was engaged in criminal activity in South Carolina. In fact, Respondent explained that he was not with Person A at the time Person A was killed. Respondent reiterated that Person A criminal activity had been 25-30 years in the past.

The Department has made some exceptions in criminal association situations involving close family relations. Respondent may have qualified under this exception; however, it appears that Respondent did not fully explain his relationship with Person A at this official Department interview in the manner with which he did so at this forum. The substance of that official Department interview was not provided to the Court. The Advocate, however, represented that Respondent denied that Person A was his brother at that interview and this was not disputed by Respondent. In fact, Respondent testified that he made no attempt to have the order not to associate with Person A rescinded. Respondent did not fully apprise the Department of the type of complex relationship he had with Person A. Nor did he seek additional time to do so. Instead, Respondent chose to inform IAB that Person A was not his brother and to disobey the order to stay away from him by visiting two car dealerships with him in South Carolina.

Accordingly, Respondent is found Guilty of Specification Nos. 1 and 2.

Specification No. 3

Respondent stands charged herein in that while assigned to Fleet Services Division, on or about July 23, 2010, he did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer made misleading statements to a homicide investigator from the Orangeburg South Carolina Sheriff's office about his whereabouts prior to the death of Mr. Person A.

Among the problem in attempting to address this Specification is its vagueness. Certainly the Specification itself does not inform us as to what the misleading statements were. Perhaps the best way to understand this allegation is to review what the Advocate said in his closing remarks about this Specification:

While Lieutenant Gallo was in South Carolina, it seemed like everybody he met told him something about the Respondent that at some point the Respondent denied; from telling the coroner and Commander Williams that he was staying in the hotel with Mr. Person A to telling Sergeant Shemper that Mr. Person A picked him up at the bus stop which he denied in one of his PG's but admitted here to telling Shemper and later Lieutenant Gallo that he didn't go into any car dealerships with Mr. Person A. The pattern went on and on.

While this statement does not really tell us what the alleged misrepresentations are, it does set forth three specific topics in which Respondent allegedly made those misrepresentations. For instance as the Advocate notes there was testimony provided by Gallo that Respondent told Golden of the coroner's office and Williams of the Orangeburg police that he had stayed with Person A in a hotel. Respondent in his testimony at this trial, and during his phone conversation with Shemper, denied staying at a hotel with Person A and denied ever telling anyone that he did.

Certainly there is an inconsistency there but that is not what is charged. Moreover, the Department offered some evidence that Person A did stay at the same hotel as Respondent in that Person A car was, according to Gallo, registered at the hotel where Respondent was staying. If the Department, as seems to be the case, believes that Respondent did in fact stay at the hotel with Person A then there is no indication of how he made a misrepresentation to the Orangeburg homicide investigators. Put another way,

Respondent made a truthful statement to the Orangeburg police and a false statement to this Department something that is not charged.

If on the other hand the Department took the position that Respondent did not stay at the hotel with Person A it offered no evidence to establish that as a fact. While the Department did not take any clear position on this issue, as noted, it did offer testimony that tended to indicate that Respondent did in fact stay at the hotel with Person A. There is yet other evidence, which is part of the Department's case, which lends credence to the Respondent's statement to the Orangeburg detectives. That is that Respondent in another instance admitted understating his contact with Person A to this Department because he believed that would get him in trouble with this Department. Thus the statement to this Department is the less credible.

Again it must be noted that Respondent is not being charged with being untruthful in his statements to this Department nor is he charged with making statements to both Departments which are inconsistent with each other. What he is charged with is making misleading statements to Orangeburg officers and that has not been established with regard to the hotel.

The next issue the Advocate identified involves who picked Respondent up at the bus stop when he got to South Carolina. Gallo testified that Respondent had told Shemper that Person A had picked him up. In his testimony to this Court he claimed that Person A was in a car with Person D when they picked him up. It is not clear that the statement to the Orangeburg police was misleading, untruthful or even materially different than what he told this Department.

The issue of the visit to the car dealership is a different matter, however. Here Respondent acknowledged that he was vague about his answer when he said that he had not visited an actual car dealership with Person A. In this instance Respondent was forced to acknowledge his evasive answer to the Orangeburg detectives when Gallo produced an unambiguous photograph of a car dealership that he and Person A had visited. It was in the context of this issue that Respondent acknowledged his efforts to understate his contact with Person A.

It was also in the context of this incident that Respondent acknowledged his overall efforts to be evasive with the Orangeburg detectives. Respondent's efforts to repudiate that admission are unpersuasive and unavailing.

Respondent is found Guilty of this Specification as it applies to his answers regarding having visited a car dealership with Person A.

Disciplinary Case No. 2011-3702

Specification Nos. 1, 2 and 3

Respondent stands charged herein that while assigned to the Military and Extended Leave Desk, while off-duty, on or about February 16, 2011, in Nassau County, he did wrongfully engage in conduct prejudicial to the Good Order, Efficiency or Discipline of the Department in that said officer gave marijuana to Person B without police purpose or necessity. He is also charged with possessing marijuana without police purpose or necessity on February 16 and 17, 2011.

Efforts were made by the Advocate to produce Person B at trial. A subpoena was served at her last known address in New York City as well as her address in Niagara

Falls, New York. Person B was not located and she never responded to the subpoenas. Thus the Advocate presented a hearsay case with respect to Person B

It is alleged that Respondent provided Person B with marijuana in his home. To support this allegation, the Advocate presented a video recorded by Person B in Respondent's home (DX 5). Sergeant Brian Denis of IAB Group 31 testified that he took over the case that then-Sergeant, now-Lieutenant Gallo had. Denis made efforts to locate Person B in connection with testifying at this proceeding. He called her telephone number, but it was not working. Denis noted that Person B was not a native New Yorker. He said that she stayed at the home of an inmate, but he [Denis] went to the location several times to speak with Person B but had negative results. He did, however, manage to conduct an interview of Person B pretrial, and he made a compact disc and had a transcript prepared of the interview (DX 2 and DX 2A).

Person B stated in sum and substance that she was in the vicinity of Gold Street near the 84 Precinct in an effort to retrieve property held by the Property Clerk's Office following an arrest. She said that she told Respondent (who was in a parked RMP at the time) that she was coming from the Property Clerk's office. They exchanged numbers and eventually began to date.

At some later point, Person B had a conversation with IAB complaining about a matter unrelated to Respondent, but then when questioned about having any knowledge of police corruption; she made allegations that she knew a police officer who supplied her with marijuana. It was determined, based on information that Person B supplied, that the police officer was Respondent. The first controlled meeting set up by IAB between Person B and Respondent was scheduled to be at an Applebee's restaurant. There were several

hours of conversation, some of which was muffled, but nothing came out of that controlled meeting. Person B decided to take it upon herself to use her cell phone to record Respondent at his residence on [REDACTED] during one of their dates (DX 5).

In movie clip no. 1, which runs approximately one minute and 35 seconds, Respondent is seen presenting Person B with a quart size Ziploc bag containing some type of wood/leaf-like substance. Person B is heard asking Respondent why he is being "stingy with the weed." Respondent never corrects Person B by denying that the substance is weed. Instead, Respondent replies that she should just "roll it up" because "he has more." When Person B continues to question Respondent as to what is in the bag he responds as he walks away from Person B that, "This is a dime," referring to a street term for a dime or ten dollar bag of marijuana. Person B objects to the small amount of marijuana in the bag and refers to it as a "skank ass nick," referring to a small amount in a five dollar bag of marijuana. In movie clip no. 2, which runs approximately 22 seconds, Respondent appears to have left the kitchen area and returns with another similarly sized Ziploc bag and says to Person B "How about this one?" Respondent continues, "Those are the only ones that I get, you know what I'm saying...I'm giving you what I get." Person B inquires as to whether she can keep that bag along with the previous bag Respondent gave her and Respondent replies, "I just pulled that bag out of another bag."

In movie clip no. 3 which runs approximately 33 seconds, Respondent states that he is going to get yet another bag. Person B again inquires why Respondent is being "stingy with the bud," "bud" being another street term for marijuana and Respondent replies, "That is all that I have." In movie clip no. 4 which runs approximately 30 seconds, Respondent is seen in another set of clothing but returns to the room where Person B is

located with yet another similarly sized Ziploc bag containing a similar substance. Person B Person B complains that the bag only has a "little bit of weed," and Respondent replies that he has to "grind up something for you." Respondent never corrects Person B Person B when she refers to each of the three bags as either "nick," "bud" or "weed." There is no mention in any of the four clips of the word "tobacco" being used by Respondent.

Following this episode, Person B Person B turns over a bag to IAB which contains remnants of a substance. It is tested and comes back positive for marijuana. In addition, a search warrant is executed at Respondent's home the following day, and a party hat recovered in the closet of Respondent's bedroom was found to contain remnants of marijuana. The Court can only surmise that each time Respondent left the room where Person B Person B was, he went somewhere in his home to retrieve another bag of weed. It is conceivable that the party hat was the place in Respondent's closet where he stored the various bags of weed. And when he opened one bag to reveal another bag, some marijuana could have been deposited into the party hat.

Respondent tried to explain at his official Department interview and at trial that the party hat belonged to his son who had been arrested for marijuana possession. He said that his son was away at college when Respondent discovered the hat in his son's room. Respondent was planning to confront his son upon his return from college. This story sounds implausible. The amount of marijuana contained in the hat was minuscule at best. The laboratory expert who tested the party hat testified that there was no obvious marijuana in the hat visible to the naked eye. It was not until she shook the hat over a white paper, that the remnants became visible. What would have caused Respondent with this small amount of marijuana contained in the party hat to assume that it was

marijuana, to remove it from his son's room and to save it in his own closet. In addition, if it only contained rolling paper there seemed to be no need to remove it from under his son's bed to his closet. Respondent's account seems incredible.

Respondent argued that prior to Person B recording via audio and recorder the encounter with Respondent, she was never searched and thus could have planted marijuana on her person to later produce and state that it belonged to Respondent, in other words, Person B framed Respondent. However, this does not explain Respondent's behavior in the four mini clips. In each instance, Person B referred to the substances in the Ziploc bags as marijuana and Respondent never corrected her statements. He in essence acquiesced to what she was saying. Respondent claimed he was just "jiving" or joking with Person B to get sex, but his defense is unavailing.

Accordingly, Respondent was found to have had marijuana in his home, albeit small amounts, without any police necessity to do so, and is therefore found Guilty of Specification Nos. 1, 2 and 3.

Specification No. 4

Respondent stands charged herein that while assigned to the Military and Extended Leave Desk, on or about and between August 2, 2010 and February 16, 2011, he did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

Evidence adduced at trial established that Respondent was associating with Person B. Person B said to IAB that when she met Respondent, she told him she was coming from the Property Clerk's office at the station house. The purpose of which would be to retrieve items as a result of an arrest. Person B demeanor in the video and recording was very crass.

She referred to marijuana as a “skank ass nick” and “bud.” She repeatedly requested more from Respondent and he supplied her with more. Marijuana is illegal and by Respondent providing bags of such to Person B he was engaged in criminal activity with a person who would likely engage in criminal activity also, namely Person B smoking marijuana.

What is also troubling about this matter is that in addition to the four mini clips referenced in the prior Specification Nos. 1 to 3, there is also a 36-second edited audio tape without video. The voices are recognizable as Respondent or “Demby” (as Person B refers to him) and Person B. The voices are familiar and repeatedly reviewing the movie clips 1-4 seem to confirm this. In this excerpt, Respondent is heard referring to his days in the streets prior to becoming a police officer. He tells Person B that he used to sell drugs at that time. Respondent tried to explain away his conduct in the mini clips by stating that he was just having conversation and trying to “get laid.” Instead his conduct explained Respondent’s lack of discomfort with Person B referring to the Ziploc bags as marijuana.

Accordingly, based on the above, Respondent is found Guilty of Specification No. 4.

Specification No. 5

Respondent stands charged herein that while assigned to the Military and Extended Leave Desk, on or about February 23, 2011, during an official Department Interview conducted by Lieutenant Kenneth Noonan, Internal Affairs Bureau, Group 33, pursuant to the provisions of Patrol Guide Section 206-13, he did wrongfully make false and misleading statements regarding the events set forth in Specification Nos. 1 and 2.

The Advocate argues that Respondent gave false and misleading statements during his official Department interview when he stated that he gave Person B smoking tobacco in a Ziploc bag. The Advocate further argued that Respondent, in fact, gave Person B marijuana. To support his contention, the Advocate offered the videotape as previously referenced to in the discussion of Specification Nos. 1-3. As previously noted by the Court, Person B referred to each of the three Ziploc bags presented to her as a form of marijuana and Respondent never corrected her by stating that the bags did not contain marijuana but contained tobacco for rolling cigars. There is not a scintilla of evidence in the movie clips that Respondent either corrected Person B assertions, or referred to the contents as tobacco.

Thus for Respondent to go to an official Department interview and proffer the explanation of tobacco, the Court finds such statements made in Respondent's official Department interview, where he is directed to be truthful, to be false and misleading statements.

Accordingly, Respondent is found Guilty of Specification No. 5

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of criminal association, failing to comply with a lawful order not to have contact with Person A and making misleading statements to a

homicide investigator from the Orangeburg South Carolina Sheriff's office about his whereabouts prior to the death of Person A. He has also been found Guilty of giving marijuana to Person B without police purpose or necessity and being in possession of marijuana without police purpose or necessity on February 16 and 17, 2011.

Respondent has also been found Guilty of on or about and between August 2, 2010 and February 16, 2011, knowingly associating with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities, namely his relationship with Person B. In addition, he has been found Guilty of on or about February 23, 2011, during an official Department Interview conducted by Lieutenant Kenneth Noonan, Internal Affairs Bureau, Group 33, pursuant to the provisions of Patrol Guide Section 206 13, wrongfully making false and misleading statements regarding the events set forth in Specifications Nos. 1 and 2.

The Advocate asked for a penalty of termination. The Court agrees. Respondent's actions over this entire event are troubling. While the Court sympathizes with Respondent over the loss of Person A his statements during that period were questionable at best. He initially denied being at a car dealership with Person A when clearly the Toyota dealership looks like a dealership. It was not until he was told that there were pictures and people identified him that he changed his story.

Respondent's conduct in the mini clips recorded by Person B certainly does not paint him in a favorable light. On a couple of occasions in the mini clips, Respondent mentions that he can only give Person B, "What he gets," leading to the question, where did he get the marijuana from? Did Respondent keep some of the marijuana from arrests he made in the past? Was he vouchering some marijuana and keeping the rest for occasions

when Person B would come and visit? On a couple of occasions during the mini clips, Respondent seemed to begin to answer the question, but then made a decision to not answer. He also never corrected Person B as she repeatedly referred to his Ziploc bags as marijuana. Although evidence at trial referred to Respondent being sent for DOLE testing and testing negative each time, the fact remains that he was in possession of the narcotics not for any police necessity. It seemed to be his way of providing favors for Person B so that he could get sex later on.

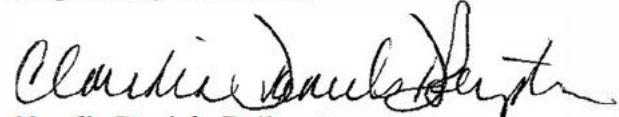
Respondent went so far as to allude to the fact that he was a drug dealer prior to becoming a police officer. Such conversation by a member of the service, even off-duty is conduct prejudicial to the good order, efficiency and discipline of the Department and demonstrates that Respondent is not fit to serve in the position of Police Officer with the New York City Police Department. Respondent attempted to explain this away by stating that he was just having conversation and trying to "get laid," but such conduct by a member of the police service is unacceptable.

In Disciplinary Case No. 78295/02, signed September 23, 2004, a six-year member is dismissed from the Department for associating with known criminals and making false statements regarding his involvement with such individuals. Respondent in that matter socialized with persons he knew had criminal records and who were smoking marijuana in Marconi Park. He then denied it to an investigator. In Disciplinary Case No. 83680/08, signed February 3, 2010, an eight-year Police Administrative Aide, with no prior disciplinary record is dismissed from the Department for unlawful possession of marijuana. The Court held in that matter that while this was a violation under the Penal Law rather than a crime, the possession of illegal drugs by members of this Department is

not acceptable. The marijuana was discovered when a warrant was executed at that Respondent's apartment. The subject of the search was that Respondent's son.

Accordingly, based on all of the above, it is recommended that Respondent be DISMISSED from his position as a police officer with the New York City Police Department.

Respectfully submitted,

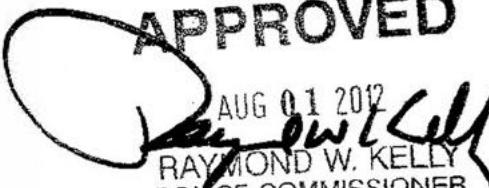


Claudia Daniels-DePeyster

Assistant Deputy Commissioner Trials

APPROVED

AUG 01 2012



RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PARRIS HOOPER
TAX REGISTRY NO. 930366
DISCIPLINARY CASE NOS. 2010-3310 & 2011-3702

In 2008, 2009 and 2010, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluations. Respondent has received one Excellent Police Duty Medal in his career to date.



On February 8, 2011, Respondent was placed in Level II Discipline Monitoring based on his overall record. Respondent completed performance monitoring effective January 13, 2012. On February 18, 2011, Respondent while on Modified Assignment was suspended and ordered to drug testing for cause in relation to these disciplinary cases. The drug results were negative.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials